IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.542 OF 2004

Bharat Margarine Ltd. and another. ... Petitioners.

vs.

Tata Finance Limited. .... Respondent.

Mr.B.M.Chatterji i/b. Debarati Nag, for Petitioners.

Mr. P.S.Purandare i/b. M/s.Kartikeya & Associates, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 6th September,2005

P.C.:-

1. Admittedly, the petitioners did not appear before the learned Arbitrator. What was argued before me relying on the judgment of the Supreme Court in the case of "M.Lachia Setty and Sons Ltd. Vs. Coffee Board Bangalore, AIR 1981 Supreme Court 162" is that while awarding damages the Arbitrator should have taken into consideration that the Respondent has not taken steps to mitigate the

damages. However, perusal of the Award shows that there are no damages awarded by the learned Arbitrator. The learned Arbitrator has held that though the petitioners have committed breach of the contract, damages need not be awarded. Interest of justice will be served, according to the learned Arbitrator, by directing the petitioners to pay amount of arrears of hire charges with interest at the contractual rate of interest. As the learned Arbitrator has not awarded any damages, there is no question of considering the judgment of the Supreme Court relied on by the petitioners on the question of mitigation of damages. The petitioners admittedly were served with the notice by the learned Arbitrator. However, the petitioners did not appear before the learned Arbitrator. In my opinion, therefore, the petitioners are not entitled to raise any challenge to the Award. Therefore, the petition is disposed of. The petitioners are directed to pay costs of this petition to the Respondent as incurred by the Respondent.